

102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

PRIOR PROVISIONS

A prior section 4567, Pub. L. 102-550, title XIII, §1337, Oct. 28, 1992, 106 Stat. 3964, related to reports during transition, prior to repeal by Pub. L. 110-289, div. A, title I, §1131(a), July 30, 2008, 122 Stat. 2711.

§ 4568. Housing Trust Fund

(a) Establishment and purpose

(1) In general

The Secretary of Housing and Urban Development (in this section referred to as the “Secretary”) shall establish and manage a Housing Trust Fund, which shall be funded with amounts allocated by the enterprises under section 4567 of this title and any amounts as are or may be appropriated, transferred, or credited to such Housing Trust Fund under any other provisions of law. The purpose of the Housing Trust Fund under this section is to provide grants to States (as such term is defined in section 4502 of this title) for use—

(A) to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families; and

(B) to increase homeownership for extremely low- and very low-income families.

(2) Federal assistance

For purposes of the application of Federal civil rights laws, all assistance provided from the Housing Trust Fund shall be considered Federal financial assistance.

(b) Allocations for HOPE bond payments

(1) In general

Notwithstanding subsection (c), to help address the mortgage crisis, of the amounts allocated pursuant to clauses (i) and (ii) of section 4567(a)(1)(B) of this title and clauses (i) and (ii) of section 4567(a)(2)(B) of this title in excess of amounts described in section 4567(e) of this title—

(A) 100 percent of such excess shall be used to reimburse the Treasury for payments made pursuant to section 1715z-23(w)(1)(C) of this title in calendar year 2009;

(B) 50 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2010; and

(C) 25 percent of such excess shall be used to reimburse the Treasury for such payments in calendar year 2011.

(2) Excess funds

At the termination of the HOPE for Homeowners Program established under section 1715z-23 of this title, if amounts used to reimburse the Treasury under paragraph (1) exceed the total net cost to the Government of the HOPE for Homeowners Program, such amounts shall be used for their original purpose, as described in paragraphs (1)(B) and (2)(B) of section 4567(a) of this title.

(3) Treasury fund

The amounts referred to in subparagraphs (A) through (C) of paragraph (1) shall be depos-

ited into a fund established in the Treasury of the United States by the Secretary of the Treasury for such purpose.

(c) Allocation for Housing Trust Fund in fiscal year 2010 and subsequent years

(1) In general

Except as provided in subsection (b), the Secretary shall distribute the amounts allocated for the Housing Trust Fund under this section to provide affordable housing as described in this subsection.

(2) Permissible designees

A State receiving grant amounts under this subsection may designate a State housing finance agency, housing and community development entity, tribally designated housing entity (as such term is defined in section 4103 of title 25), or any other qualified instrumentality of the State to receive such grant amounts.

(3) Distribution to States by needs-based formula

(A) In general

The Secretary shall, by regulation, establish a formula within 12 months of July 30, 2008, to distribute amounts made available under this subsection to each State to provide affordable housing to extremely low- and very low-income households.

(B) Basis for formula

The formula required under subparagraph (A) shall include the following:

(i) The ratio of the shortage of standard rental units both affordable and available to extremely low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to extremely low-income renter households in all the States.

(ii) The ratio of the shortage of standard rental units both affordable and available to very low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to very low-income renter households in all the States.

(iii) The ratio of extremely low-income renter households in the State living with either (I) incomplete kitchen or plumbing facilities, (II) more than 1 person per room, or (III) paying more than 50 percent of income for housing costs, to the aggregate number of extremely low-income renter households living with either (IV) incomplete kitchen or plumbing facilities, (V) more than 1 person per room, or (VI) paying more than 50 percent of income for housing costs in all the States.

(iv) The ratio of very low-income renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of very low-income renter households paying more than 50 percent of income on rent in all the States.

(v) The resulting sum calculated from the factors described in clauses (i) through (iv) shall be multiplied by the relative cost of construction in the State. For purposes

of this subclause,¹ the term “cost of construction”—

(I) means the cost of construction or building rehabilitation in the State relative to the national cost of construction or building rehabilitation; and

(II) shall be calculated such that values higher than 1.0 indicate that the State’s construction costs are higher than the national average, a value of 1.0 indicates that the State’s construction costs are exactly the same as the national average, and values lower than 1.0 indicate that the State’s cost of construction are lower than the national average.

(C) Priority

The formula required under subparagraph (A) shall give priority emphasis and consideration to the factor described in subparagraph (B)(i).

(4) Allocation of grant amounts

(A) Notice

Not later than 60 days after the date that the Secretary determines the formula amounts described in paragraph (3), the Secretary shall caused² to be published in the Federal Register a notice that such amounts shall be so available.

(B) Grant amount

In each fiscal year other than fiscal year 2009, the Secretary shall make a grant to each State in an amount that is equal to the formula amount determined under paragraph (3) for that State.

(C) Minimum State allocations

If the formula amount determined under paragraph (3) for a fiscal year would allocate less than \$3,000,000 to any of the 50 States of the United States or the District of Columbia, the allocation for such State of the United States or the District of Columbia shall be \$3,000,000, and the increase shall be deducted pro rata from the allocations made to all other of the States (as such term is defined in section 4502 of this title).

(5) Allocation plans required

(A) In general

For each year that a State or State designated entity receives a grant under this subsection, the State or State designated entity shall establish an allocation plan. Such plan shall—

(i) set forth a plan for the distribution of grant amounts received by the State or State designated entity for such year;

(ii) be based on priority housing needs, as determined by the State or State designated entity in accordance with the regulations established under subsection (g)(2)(D);

(iii) comply with paragraph (6); and

(iv) include performance goals that comply with the requirements established by

the Secretary pursuant to subsection (g)(2).

(B) Establishment

In establishing an allocation plan under this paragraph, a State or State designated entity shall—

(i) notify the public of the establishment of the plan;

(ii) provide an opportunity for public comments regarding the plan;

(iii) consider any public comments received regarding the plan; and

(iv) make the completed plan available to the public.

(C) Contents

An allocation plan of a State or State designated entity under this paragraph shall set forth the requirements for eligible recipients under paragraph (8) to apply for such grant amounts, including a requirement that each such application include—

(i) a description of the eligible activities to be conducted using such assistance; and

(ii) a certification by the eligible recipient applying for such assistance that any housing units assisted with such assistance will comply with the requirements under this section.

(6) Selection of activities funded using Housing Trust Fund grant amounts

Grant amounts received by a State or State designated entity under this subsection may be used, or committed for use, only for activities that—

(A) are eligible under paragraph (7) for such use;

(B) comply with the applicable allocation plan of the State or State designated entity under paragraph (5); and

(C) are selected for funding by the State or State designated entity in accordance with the process and criteria for such selection established pursuant to subsection (g)(2)(D).

(7) Eligible activities

Grant amounts allocated to a State or State designated entity under this subsection shall be eligible for use, or for commitment for use, only for assistance for—

(A) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 4565(a)(2)(B) of this title and for operating costs, except that not less than 75 percent of such grant amounts shall be used for the benefit only of extremely low-income families or families with incomes at or below the poverty line (as such term is defined in section 9902 of title 42, including any revision required by such section) applicable to a family of the size involved, and not more than 25 percent for the benefit only of very low-income families; and

(B) the production, preservation, and rehabilitation of housing for homeownership, including such forms as down payment assistance, closing cost assistance, and assistance for interest rate buy-downs, that—

(i) is available for purchase only for use as a principal residence by families that qualify both as—

¹ So in original. Probably should be “this clause.”

² So in original. Probably should be “cause”.

(I) extremely low- and very low-income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and

(II) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act [42 U.S.C. 12721 et seq.] shall for purposes of this subsection be considered to refer to assistance from affordable housing fund grant amounts;

(ii) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12745(b)(1)];

(iii) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12745(b)(3)] and applicable to the participating jurisdiction that is the State in which such housing is located; and

(iv) is made available for purchase only by, or in the case of assistance under this subsection, is made available only to homebuyers who have, before purchase completed a program of independent financial education and counseling from an eligible organization that meets the requirements of section 132 of the Federal Housing Finance Regulatory Reform Act of 2008.³

(8) Tenant protections and public participation

All amounts from the Trust Fund shall be allocated in accordance with, and any eligible activities carried out in whole or in part with grant amounts under this subchapter (including housing provided with such grant amounts) shall comply with and be operated in compliance with—

(A) laws relating to tenant protections and tenant rights to participate in decision making regarding their residences;

(B) laws requiring public participation, including laws relating to Consolidated Plans, Qualified Allocation Plans, and Public Housing Agency Plans; and

(C) fair housing laws and laws regarding accessibility in federally assisted housing, including section 794 of title 29.

(9) Eligible recipients

Grant amounts allocated to a State or State designated entity under this subsection may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that—

(A) has demonstrated experience and capacity to conduct an eligible activity under paragraph (7), as evidenced by its ability to—

(i) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;

(ii) design, construct or rehabilitate, and market affordable housing for homeownership; or

(iii) provide forms of assistance, such as down payments, closing costs, or interest rate buy-downs for purchasers;

(B) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

(C) demonstrates its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

(D) makes such assurances to the State or State designated entity as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this subsection during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under paragraph (8) that are engaged in by the recipient and funded with such grant amounts.

(10) Limitations on use

(A) Required amount for homeownership activities

Of the aggregate amount allocated to a State or State designated entity under this subsection not more than 10 percent shall be used for activities under subparagraph (B) of paragraph (7).

(B) Deadline for commitment or use

Grant amounts allocated to a State or State designated entity under this subsection shall be used or committed for use within 2 years of the date that such grant amounts are made available to the State or State designated entity. The Secretary shall recapture any such amounts not so used or committed for use and reallocate such amounts under this subsection in the first year after such recapture.

(C) Use of returns

The Secretary shall, by regulation, provide that any return on a loan or other investment of any grant amount used by a State or State designated entity to provide a loan under this subsection shall be treated, for purposes of availability to and use by the State or State designated entity, as a grant amount authorized under this subsection.

(D) Prohibited uses

The Secretary shall, by regulation—

(i) set forth prohibited uses of grant amounts allocated under this subsection, which shall include use for—

(I) political activities;

(II) advocacy;

(III) lobbying, whether directly or through other parties;

(IV) counseling services;

(V) travel expenses; and

(VI) preparing or providing advice on tax returns;

and for the purposes of this subparagraph, the prohibited use of funds for political ac-

³ See References in Text note below.

tivities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section 501 of title 26;

(ii) provide that, except as provided in clause (iii), grant amounts of a State or State designated entity may not be used for administrative, outreach, or other costs of—

(I) the State or State designated entity; or

(II) any other recipient of such grant amounts; and

(iii) limit the amount of any grant amounts for a year that may be used by the State or State designated entity for administrative costs of carrying out the program required under this subsection, including home ownership counseling, to a percentage of such grant amounts of the State or State designated entity for such year, which may not exceed 10 percent.

(E) Prohibition of consideration of use for meeting housing goals or duty to serve

In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 4565 of this title, the Director may not consider any grant amounts used under this section for eligible activities under paragraph (7). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from such grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

(d) Reduction for failure to obtain return of misused funds

If in any year a State or State designated entity fails to obtain reimbursement or return of the full amount required under subsection (e)(1)(B) to be reimbursed or returned to the State or State designated entity during such year—

(1) except as provided in paragraph (2)—

(A) the amount of the grant for the State or State designated entity for the succeeding year, as determined pursuant to this section, shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

(B) the amount of the grant for the succeeding year for each other State or State designated entity whose grant is not reduced pursuant to subparagraph (A) shall be increased by the amount determined by applying the formula established pursuant to this section to the total amount of all reductions for all State or State designated entities for such year pursuant to subparagraph (A); or

(2) in any case in which such failure to obtain reimbursement or return occurs during a year immediately preceding a year in which grants under this section will not be made, the State or State designated entity shall pay to

the Secretary for reallocation among the other grantees an amount equal to the amount of the reduction for the entity that would otherwise apply under paragraph (1)(A).

(e) Accountability of recipients and grantees

(1) Recipients

(A) Tracking of funds

The Secretary shall—

(i) require each State or State designated entity to develop and maintain a system to ensure that each recipient of assistance under this section uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

(ii) establish minimum requirements for agreements, between the State or State designated entity and recipients, regarding assistance under this section, which shall include—

(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the assistance to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

(II) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

(B) Misuse of funds

(i) Reimbursement requirement

If any recipient of assistance under this section is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the State or State designated entity shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the State or State designated entity for such misused amounts and return to the State or State designated entity any such amounts that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.

(ii) Determination

A determination is made in accordance with this clause if the determination is made by the Secretary or made by the State or State designated entity, provided that—

(I) the State or State designated entity provides notification of the determination to the Secretary for review, in the discretion of the Secretary, of the determination; and

(II) the Secretary does not subsequently reverse the determination.

(2) Grantees**(A) Report****(i) In general**

The Secretary shall require each State or State designated entity receiving grant amounts in any given year under this section to submit a report, for such year, to the Secretary that—

(I) describes the activities funded under this section during such year with such grant amounts; and

(II) the⁴ manner in which the State or State designated entity complied during such year with any allocation plan established pursuant to subsection (c).

(ii) Public availability

The Secretary shall make such reports pursuant to this subparagraph publicly available.

(B) Misuse of funds

If the Secretary determines, after reasonable notice and opportunity for hearing, that a State or State designated entity has failed to comply substantially with any provision of this section, and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

(i) reduce the amount of assistance under this section to the State or State designated entity by an amount equal to the amount of grant amounts which were not used in accordance with this section;

(ii) require the State or State designated entity to repay the Secretary any amount of the grant which was not used in accordance with this section;

(iii) limit the availability of assistance under this section to the State or State designated entity to activities or recipients not affected by such failure to comply; or

(iv) terminate any assistance under this section to the State or State designated entity.

(f) Definitions

For purposes of this section, the following definitions shall apply:

(1) Extremely low-income renter household

The term “extremely low-income renter household” means a household whose income is not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(2) Recipient

The term “recipient” means an individual or entity that receives assistance from a State or State designated entity from amounts made available to the State or State designated entity under this section.

(3) Shortage of standard rental units both affordable and available to extremely low-income renter households**(A) In general**

The term “shortage of standard rental units both affordable and available to ex-

tremely low-income renter households” means for any State or other geographical area the gap between—

(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 30 percent of the adjusted area median income as determined by the Secretary that are occupied by extremely low-income renter households or are vacant for rent; and

(ii) the number of extremely low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of extremely low-income households as described in subparagraph (A)(ii), there is no shortage.

(4) Shortage of standard rental units both affordable and available to very low-income renter households**(A) In general**

The term “shortage of standard rental units both affordable and available to very low-income renter households” means for any State or other geographical area the gap between—

(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 50 percent of the adjusted area median income as determined by the Secretary that are occupied by very low-income renter households or are vacant for rent; and

(ii) the number of very low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of very low-income households as described in subparagraph (A)(ii), there is no shortage.

(5) Very low-income family

The term “very low-income family” has the meaning given such term in section 4502 of this title, except that such term includes any family that resides in a rural area that has an income that does not exceed the poverty line (as such term is defined in section 9902(2) of title 42, including any revision required by such section) applicable to a family of the size involved.

(6) Very low-income renter households

The term “very low-income renter households” means a household whose income is in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(g) Regulations**(1) In general**

The Secretary shall issue regulations to carry out this section.

(2) Required contents

The regulations issued under this subsection shall include—

(A) a requirement that the Secretary ensure that the use of grant amounts under

⁴ So in original. A word appears to be missing before “the”.

this section by States or State designated entities is audited not less than annually to ensure compliance with this section;

(B) authority for the Secretary to audit, provide for an audit, or otherwise verify a State or State designated entity's activities to ensure compliance with this section;

(C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee or recipient to the Secretary shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants;

(D) requirements for a process for application to, and selection by, each State or State designated entity for activities meeting the State or State designated entity's priority housing needs to be funded with grant amounts under this section, which shall provide for priority in funding to be based upon—

- (i) geographic diversity;
- (ii) ability to obligate amounts and undertake activities so funded in a timely manner;
- (iii) in the case of rental housing projects under subsection (c)(7)(A), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;
- (iv) in the case of rental housing projects under subsection (c)(7)(A), the extent of the duration for which such rents will remain affordable;
- (v) the extent to which the application makes use of other funding sources; and
- (vi) the merits of an applicant's proposed eligible activity;

(E) requirements to ensure that grant amounts provided to a State or State designated entity under this section that are used for rental housing under subsection (c)(7)(A) are used only for the benefit of extremely low- and very low-income families; and

(F) requirements and standards for establishment, by a State or State designated entity, for use of grant amounts in 2009 and subsequent years of performance goals, benchmarks, and timetables for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts.

(h) Affordable housing trust fund

If, after July 30, 2008, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this chapter for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (c), the Secretary shall in such subsequent year and any remaining years referred to in subsection (c) transfer to such affordable housing trust fund the aggregate amount allocated pursuant to subsection (c) in such year. Notwithstanding any other provision of law, assistance provided

using amounts transferred to such affordable housing trust fund pursuant to this subsection may not be used for any of the activities specified in clauses (i) through (vi) of subsection (c)(9)(D).

(i) Funding accountability and transparency

Any grant under this section to a grantee by a State or State designated entity, any assistance provided to a recipient by a State or State designated entity, and any grant, award, or other assistance from an affordable housing trust fund referred to in subsection (h) shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note). Upon the request of the Director of the Office of Management and Budget, the Secretary shall obtain and provide such information regarding any such grants, assistance, and awards as the Director of the Office of Management and Budget considers necessary to comply with the requirements of such Act, as applicable, pursuant to the preceding sentence.

(Pub. L. 102-550, title XIII, § 1338, as added Pub. L. 110-289, div. A, title I, § 1131(b), July 30, 2008, 122 Stat. 2712.)

REFERENCES IN TEXT

Section 4103 of title 25, referred to in subsec. (c)(2), was in the original "section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)", and was translated as meaning section 4 of the Native American Housing Assistance and Self-Determination Act of 1996, to reflect the probable intent of Congress.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (c)(7)(B)(i)(II), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

Section 132 of the Federal Housing Finance Regulatory Reform Act of 2008, referred to in subsec. (c)(7)(B)(iv), probably means section 1132 of Pub. L. 110-289, which is set out as a note under section 1701x of this title.

This chapter, referred to in subsec. (h), was in the original "this title", meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal Funding Accountability and Transparency Act of 2006, referred to in subsec. (i), is Pub. L. 109-282, Sept. 26, 2006, 120 Stat. 1186, which is set out as a note under section 6101 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1338 of Pub. L. 102-550, title XIII, Oct. 28, 1992, 106 Stat. 3964, was set out as a note under section 4562 of this title, prior to repeal by Pub. L. 110-289, div. A, title I, § 1122(a)(2), July 30, 2008, 122 Stat. 2689.

§ 4569. Capital Magnet Fund

(a) Establishment

There is established in the Treasury of the United States a trust fund to be known as the Capital Magnet Fund, which shall be a special account within the Community Development Financial Institutions Fund.